

BOB W. SCOTT

IBLA 79-457

Decided March 27, 1980

Appeal from decision of Eastern States Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease ES 9836.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals --  
Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and in delivery of the mail. Mailing the rental in Dallas, Texas, 2 days before it is due across the country in Silver Spring, Maryland, does not constitute reasonable diligence.

APPEARANCES: Bob W. Scott, pro se.

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## OPINION BY ADMINISTRATIVE JUDGE LEWIS

Bob W. Scott appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated May 14, 1979, denying reinstatement of oil and gas lease ES 9836. The lease terminated automatically by operation of law when appellant failed to pay the annual rental on or before the anniversary date of the lease.

The anniversary date of the lease was February 1, 1979. Appellant's payment envelope was postmarked in Dallas, Texas, on January 30, 1979, and received by BLM in Silver Spring, Maryland, on February 2, 1979. BLM notified appellant that the lease had terminated for failure to pay rental in a timely manner.

Appellant petitioned for reinstatement, stating that payment was mailed by him to the Eastern States Office January 25, 1979. He alleged that sufficient time was allowed for the funds to be received before the expiration date.

On May 14, 1979, BLM issued its decision denying reinstatement of the lease because it found that mailing the rental 2 days before the due date in Dallas, Texas, when it is due in Silver Spring, Maryland, does not constitute reasonable diligence as required by 43 CFR 3108.2-1(c)(2).

In his statement of reasons, appellant contends that his failure to make timely payment was not due to lack of reasonable diligence on his part. He states, "I say the letter was put in U.S. Post Office prior to January 30, but even that date (Jan. 30) would have been ample time for an air mail letter to reach Maryland from Texas." He contends this gave 3 working days including the due date.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c). The postmark date stamped on a rental payment envelope is deemed to be the date of mailing, absent evidence to the contrary. Joseph W. Semien, 41 IBLA 185 (1979).

[2] BLM properly denied appellant's petition for reinstatement on the ground that appellant's posting of the payment January 30 in Dallas, Texas, did not constitute reasonable diligence when that payment was due such a great distance away in Silver Spring, Maryland, on February 1, 1979. Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail.

We have repeatedly considered this situation and have held that mailing the rental 2 days before the due date does not constitute reasonable diligence. Norman C. Stroink, 44 IBLA 188 (1979); Reynolds Mining Corp., 39 IBLA 405 (1979); Helen Bacha, 39 IBLA 146 (1979).

In Reynolds Mining Corp., *supra*, we discussed mailing of rental payments over even a shorter distance than the instant case 2 days before the due date. There the elapsed time was exactly the same as, in the instant case, where a letter was mailed on January 30, due February 1. We permitted construing the period as 3 days, by counting the day the letter was due. However, we still found lack of reasonable diligence where we emphasized:

We cannot say that mailing a payment this distance [Texas to Utah] two days in advance of the due date takes into account "normal delays" in the handling of the mail. Indeed, it is clear that a letter in that instance might arrive on time only if there were no delays of any kind, but rather was handled with extraordinary dispatch.

Therefore, as we have pointed out, appellant's payment was not mailed early enough to allow for any delays in collection, transmittal, and delivery of the mail. We affirm our earlier ruling and find that appellant did not exercise reasonable diligence. His petition for reinstatement was properly denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Frederick Fishman  
Administrative Judge

